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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/699,971

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Jamie Crawford

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27799

7590

06/23/2008

COHEN, PONTANI, LIEBERMAN & PAVANE LLP

551 FIFTH AVENUE

SUITE 1210

NEW YORK, NY 10176

EXAMINER

MACNEILL, ELIZABETH

ART UNIT

PAPER NUMBER

3767

MAIL DATE

DELIVERY MODE

06/23/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/699,971

Applicant(s)

CRAWFORD ET AL.

Examiner

ELIZABETH R. MACNEILL

Art Unit

3767

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 May 2008.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,6-15,17-25,27-33,37-41 and 43-50 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1,2,6-15,17-23,25,27-33,37-41 and 43-47 is/are rejected.
7) ☒ Claim(s) 24 and 48-50 is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-848)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 6-15, 17, 21, 23-25, 29, 30, 32, 33, 37-41, and 43-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Asbaghi (US 6,884,237) in view of Berthier (US 5,429,612).

Asbaghi teaches a barrel (12), spring (38) and cover (14) assembly which may be used with a syringe (Fig 6). The shield includes an entry track (distal of lock 48, pin 40a is in the entry track at Fig 3A); a lock-out track having a first end (end of section 46) and a second end (end of section 44) which extend beyond the intersection of the entry and lockout tracks (at lock 48), and a pin (40a-b) which slides in the tracks from a first position (Fig 3A) to a second position (Fig 3C) against the urging of the spring to a third position (Fig 3E) by the urging of the spring. As to claim 2,7,8, 33, 38, 45-47 see resilient arm 48 which prevents the pin from re-entering the entry track. As to claim 9, see locking device 52a-b, Fig 4. The deflectable arm (48) is a fixed blocking surface because one end of the blocking surface is permanently fixed to the wall of the track. Asbaghi does not teach that the pin is on a resilient lever arm.

Berthier discloses a barrel 7, cannula 6, plunger 5, shield 8, urging member 20, pin 26 on a lever arm and one-way step 27. See Figures 1-3. Berthier also shows an entry

track 23 and a lockout track 25/28. Berthier also shows lock 29 to prevent moving the pin out of the third position.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the lockout track and resilient pin of Berthier with the sliding shield arrangement of Asbaghi since it has been held that improving similar devices in the same way is within the skill of an ordinary worker in the art.

As to **claims 14, 40** Asbaghi teaches that the entry track is straight and that the lock out track is curved around the barrel. It would have been obvious to use a curved entry track and a straight lockout track as a matter of obvious design choice since the device would function in the same manner and the change does not solve a stated problem.

3. Claims 18, 19, 22, 27, 28, and 31 rejected under 35 U.S.C. 103(a) as being unpatentable over Asbaghi in view of Berthier.

It is well known in the art to use glass or plastic as a material for a syringe barrel. It would have been within the skill of one of ordinary skill in the art to use glass or plastic as the material for the syringe barrel as a matter of obvious design choice.

Allowable Subject Matter

1. Claims 24 and 48-50 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

4. Applicant's arguments have been considered but are not persuasive. Applicant argues that deflectable arm (48) which prevents the pin from returning to the entry track is not a "fixed blocking surface." Because the end of the arm is permanently attached to the wall of the blocking track, the examiner reasonably considers the arm to be a "fixed blocking surface."

Conclusion

1. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **ELIZABETH R. MACNEILL** whose telephone number is (571)272-9970. The examiner can normally be reached on 9:00-5:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Simons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Elizabeth R MacNeill/
Examiner, Art Unit 3767
/Kevin C. Simons/
Supervisory Patent Examiner, Art Unit 3767